

EUGENE M. WITT

IBLA 74-158

Decided May 17, 1974

Appeal from decision of District Office, Bureau of Land Management, Fairbanks, Alaska, rejecting notice of location and application to purchase trade and manufacturing site F-19130.

Affirmed.

Alaska: Possessory Rights--Alaska: Trade and Manufacturing Sites
-- Applications and Entries: Valid Existing Rights--Withdrawals and
Reservations: Effect of

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where occupancy prior to the withdrawal cannot be given credit under the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), because the claimant did not file a notice of location or purchase application until three years after the withdrawal.

Alaska: Trade and Manufacturing Sites--Applications and Entries:
Filing--Withdrawals and Reservations: Effect of

A notice of location for a trade and manufacturing site claim is not proper for recordation, and an application to purchase a trade and manufacturing site is properly rejected, when the land applied for is withdrawn from disposal.

APPEARANCES: Eugene M. Witt, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On June 21, 1972, Eugene M. Witt filed a notice of location and an application to purchase unsurveyed land on Timber Lake in Block 8, T. 12 S., R. 24 E., Umiat Meridian, Alaska. The application was filed pursuant to the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), which provides for the purchase of up to 80 acres by any qualified claimant occupying land with improvements for use as a trade and manufacturing site. On August 16, 1973, the Fairbanks District Office, Bureau of Land Management (BLM), issued a decision holding that the notice of location was unacceptable for recordation and rejecting the application to purchase. The decision was based on the finding that on the date appellant filed his notice of location and application to purchase, the land involved was withdrawn from entry and settlement under the public land laws by Public Land Order (hereinafter P.L.O.) No. 5180, 37 F.R. 5583 (March 16, 1972), as amended by P.L.O. No. 5250, 37 F.R. 18370 (September 15, 1972).

The issues in this case relate to the status of the land. The land involved was withdrawn by P.L.O. No. 4582, 34 F.R. 1025 (January 23, 1969), in aid of legislation to determine and protect the rights of the native Aleuts, Eskimos, and Indians of Alaska. P.L.O. No. 4962, 35 F.R. 18874 (December 11, 1970), and P.L.O. No. 5081, 36 F.R. 12017 (June 24, 1971), extended the withdrawal effected by P.L.O. No. 4582. The Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. § 1601 et seq. (Supp. II, 1972), was enacted on December 18, 1971. Section 17(d)(1) of this Act, 43 U.S.C. § 1616(d)(1) (Supp. II, 1972), revoked P.L.O. No. 4582 but imposed a 90-day withdrawal pending classification of public lands by the Secretary of the Interior. P.L.O. 5180, 37 F.R. 5583 (March 16, 1972), was promulgated under the authority of section 1616(d)(1) on March 9, 1972, thus maintaining the withdrawn status of this land. P.L.O. No. 5193, 37 F.R. 6092 (March 24, 1972), and P.L.O. No. 5250, 37 F.R. 18730 (September 15, 1972), both amended P.L.O. No. 5180, but did not alter the withdrawn status of the land.

Appellant asserts that he began use and occupancy of the tract on August 1, 1968. His notice of location, however, was not filed until June 21, 1972. This presents the issue of whether this occupancy, assuming arguendo it otherwise meets the requirements of the Trade and Manufacturing Site Act, was protected by the clause in P.L.O. No. 4582 and subsequent withdrawals excluding land "subject to valid existing rights" from attachment of the withdrawal. The Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), provides that anyone initiating a trade and manufacturing site claim must file a notice of location in the appropriate land office within 90 days of initia-

ting the claim, or else the claimant will receive no credit for occupancy maintained prior to the filing of the notice of location or application to purchase.

In Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972), this Board construed the effect of the Act of April 29, 1950, as applied to the "valid existing rights" language of P.L.O. No. 4582. We held that occupancy of a trade and manufacturing site by itself does not establish a valid existing right excepting the land from attachment of the withdrawal, as the Act of April 29, 1950, precludes consideration of occupancy of a tract prior to 90 days from the filing of a notice of location or purchase application.

Since appellant did not file such a notice or application within 90 days of the date he attests he initiated occupancy and use, August 1, 1968, his occupancy and use of the land before it was withdrawn in 1969 cannot be considered. Therefore, he had no cognizable rights that were protected against the attachment of the withdrawal effected by P.L.O. No. 4582, and the subsequent withdrawals. The filing of his application to purchase withdrawn land was properly rejected. Kennecott Copper Corp., *supra*. Also, his notice of location was not acceptable for recordation. See Rampart Enterprises, 72 I.D. 236, 237 (1965); Albert L. Scephurek, A-28798 (March 27, 1962).

Appellant asserts that he relied on land office personnel and waited to file until the land office informed him that the land status might have changed. We note that upon the expiration of the 90-day statutory withdrawal in section 17(d) of ANCSA, the public land status might have changed. The promulgation of P.L.O. No. 5180, however, extended the withdrawal of the lands around Timber Lake.

Appellant asserts only that he was confused and misled by advice received from District Office personnel. He does not assert that he was told that an application to purchase filed after March 18, 1972 (the date the statutory withdrawal was to expire), would be approved; nor does he assert that he was discouraged from filing his location notice prior to the first withdrawal of the land more than three years before. We note, however, that even if such misinformation had been given him, 43 CFR 1810.3(c) provides:

Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

Appellant objects to the delay in adjudicating his application to purchase. Whatever the cause of the "delay," the land status did not change during the adjudication period, and appellant cannot gain any rights in the land due to delay. 43 CFR 1810.3(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joseph W. Goss
Administrative Judge

